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IN THE

Supreme Court of the United States

October Term, 1957

593

No. ~~592~~

MAURICE HAAS,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

HAAS REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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New York, N. Y.
January 8, 1958

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I

The Government argues "that the function of collecting income taxes necessarily includes the functions of ascertaining the amount of the tax, and assessing the tax." (Pt. 3, pp. 28-29).

The Government argues further:

> "Whatever doubt the opening paragraph of the count might have raised was certainly dispelled by the five succeeding paragraphs, each of which refers, in some form of language, to 'concealing the nature and source of the income received by the defendants herein'. Clearly, this could not refer to the mere mechanical process of collecting a tax, but went to the Treasury Department's function of ascertaining its amount." (Pt. 3, p. 29).

In arguing accordingly, the Government conveniently overlooks the meaningful and significant action of the Grand

Jury in eliminating from the indictment tried an interference with the function of "assessment" of income taxes. Moreover, the "means" paragraphs of the conspiracy count cannot be resorted to to determine the charge of conspiracy or to supply an essential allegation contrary to what was specifically charged.

The definitive action on the part of the Grand Jury in removing from the original count the function of determination of tax liability, or, as it is otherwise called; the function of "assessment" of income taxes, was a mandate as to what the charge was, and its action cannot be altered or amended by the trial court at the request of the prosecution as if it were a civil action to amend the pleadings to conform to the proof.

The indictment as charged, and upon which the defendants were tried, required no interpretation of the nature of the function of the Treasury Department interfered with. By superseding the original indictment, the Grand Jury clearly said that it was not charging an interference with the function of "assessment" of income taxes. Equally clear was that in superseding the original indictment which charged an interference with "assessment and collection of income taxes", the Grand Jury charged only an interference with the function of "collection" of income taxes.

In civil situations assessment and collection, while interdependent, are separate and distinct functions. In a criminal charge, to confuse or merge these functions when it suits the prosecution, and when such action is directly contrary to what the Grand Jury did, is to deny due process of law, as well as to violate the Sixth Amendment to the Constitution.

The prosecution farther argues that any doubt as to the nature of the charge is removed upon an examination of the "means paragraphs" (Pt. 3, p. 29). In other words, that the indictment measured by the "means paragraph"

indicates that the charge is one of interference with the function of determining income tax liability or "assessment" and not collection of income taxes. However, the "means" paragraphs cannot, as urged by the Government, be resorted to in aid of defining the nature of the charge of conspiracy or in supplying an essential allegation contrary to what was specifically charged. *Joplin Mercantile Co., et al. v. United States*, 236 U. S. 531, 535-536 (1915).

II

The Government asserts that petitioner Haas contends "that the fifth count conspiracy was no more than a conspiracy to conceal the tax evasion crimes alleged to have been committed in the first four counts", and " * * * it is apparent that a conspiracy to obstruct the taxing authorities in their efforts to collect the revenue is quite distinct from a substantive tax evasion crime, and from a conspiracy to commit such an offense" (Pt. 5, ftn. 21, p. 33).

Haas' contention in this regard was based specifically on what the Second Circuit held. The Second Circuit itself construed the fifth count as involving acts on the part of the conspirators to hide the crimes charged in the first four counts.

The Government does not answer the extent to which petitioner Haas thus claims the conspiracy was barred by the three year statute of limitations under *Grunewald v. United States*, 353 U. S. 391, by arguing that the fifth count conspiracy is different from a conspiracy to commit income tax evasion. Obviously, an agreement to conceal attempts to commit tax evasion is different from an agreement to attempt to commit income tax evasion. It was this very point which was the crux of this court's holding in *Grunewald v. United States, supra*. If, as the Second Circuit

held, the fifth count conspiracy was nothing more than an agreement to hide the past, then, argues petitioner Haas, the fifth count was barred by the three year statute of limitations under *Grunewald* v. *United States*, *supra*.

III

Klein's personal Federal income tax return for 1947, the falsity of which, amongst other things, the prosecution claimed supported the charge in the fifth count, was in the first instance mechanically prepared in the office of petitioner Haas. However, that return was finally prepared on the advice of Klein's lawyers (III, 1869-1870, 1540). The Second Circuit Court indicated in its opinion that the jury could have found that two of the items in that return were acts of concealment (Brief, petitioner Haas, A, 11-12). In addition, Alprin's Federal income tax returns from 1947 to 1951 were prepared in the office of petitioner Haas. Alprin's failure to include the draft received from Tivoli in his 1947 tax return as a commission paid in 1947, as was charged by the Government, was heavily underscored in the trial.

Consequently, the extent of Haas' legal responsibility with regard to his activities in the preparation of Klein's 1947 return and Alprin's 1947 return was of crucial importance in the jury's determination of whether Haas was a member of this conspiracy (III, 1877; I, 492, 502-503). The trial court did not meet that responsibility, as urged by the Government to this Court, by merely charging the jury that they could not find Haas a member of the conspiracy merely by the performance of professional services. The jury might have taken a completely different attitude had it been instructed as to what the Treasury regulations required of petitioner Haas in the preparation of those returns.

CONCLUSION

For the reasons stated here and in the original petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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